

Remarks/Arguments

A. Claims in the Case:

Claims 1, 3, 6, 18-20, 22, 26 and 27 stand rejected. Claims 2, 4, 5, 7-17, 21, 23-25 and 28-37 are objected to for being dependent on one or more rejected base claims. No amendments to the claims are made in the present communication. Claims 1-37 are pending in the case.

B. 35 U.S.C. §103 Rejections

The rejections detailed in the prior Office Action of claims 1, 3, 6, 18-20, 22, 26 and 27 pursuant to 35 U.S.C. §103(a) in light of the combination of U.S. Patent Application Publ. No. 2005/0029701 by Lin et al., (“Lin”) and U.S. Re-issue Patent RE 33,161 to Brown et al (“Brown”) were maintained in the current Office Action. In response to these rejections, Applicant asserted that the use of Lin as a prior art reference against the instant claims was improper, since “Lin only qualifies as prior art under 35 USC §102(e) and the inventions were commonly assigned at the time the instant application was filed, Lin is disqualified under 35 U.S.C. § 103 (c) as prior art in a rejection under 35 U.S.C. § 103(a).” (Applicant’s prior communication, page 8, third paragraph).

The Examiner seems to have rejected Applicant’s statement based on a technicality, stating “Applicant’s statement that the current application and Lin were commonly assigned at the time the instant application was filed and are commonly owned are (*sic*) not sufficient to disqualify Lin as prior art. Applicants need to state that the prior art and the present application ‘were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.’ See MPEP 706.02(l)(1).” (Office Action, page 2, section 2).

Applicant recognizes and appreciates the Examiner’s diligence in this regard and regrets that the wording of previously provided statement to disqualify Lin as prior art under 35 U.S.C. §103(c) was not in full compliance with MPEP §706.02(l)(2). In accordance therewith, Applicant restates his belief that, pursuant to 35 U.S.C. §103(c), Lin is disqualified as prior art in a rejection under 35 U.S.C. § 103(a) since Lin and the instant application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person (i.e., Calcitec, Inc.). Documentation in support of this assertion was provided in Applicant’s prior response and is of record in the case. Applicant has therefore not included such documentation herewith.

Applicant believes that the statement made above is sufficient to disqualify Lin under 35 U.S.C. §103(c) as prior art. Applicant further believes that the burden of establishing that Lin is disqualified as prior art under 35 U.S.C. 103(c) has been met, and respectfully requests the removal of all outstanding obviousness rejections against the claims.

C. Claim Objections

Claims 2, 4, 5, 7-17, 21, 23-25 and 28-37 were objected to for being dependent on a rejected base claim. The Office Action indicated that these claims would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims. Applicant believes however, that these objections are moot in light of the remarks made above, and respectfully requests reconsideration of these claims.

Summary

In light of the above, Applicant submits that the pending claims are patentable. Favorable reconsideration thereof is respectfully solicited.

Conclusion

Applicant has enclosed herewith a Fee Authorization in the amount of \$575 to cover the cost associated with the filing of a Request for Continued Examination and an Information Disclosure Statement. Applicant believes that no extension of time is required in connection with this submission, however, if such an extension is required, Applicant hereby requests the appropriate extension of time. Applicant believes no fees in addition to those outlined above are due in association with this submission or any of the accompanying documents. If any fees have been omitted or if any additional fees are required, please charge the appropriate fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5937-00600/EBM.

Respectfully submitted,



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Date: 6/14/06